



FCTC

WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL

CONFERENCE OF THE PARTIES TO THE
WHO FRAMEWORK CONVENTION ON TOBACCO CONTROL

(Draft) FCTC/COP/10/A/R/1
7 February 2024

Tenth session (resumed)
Panama City, Panama, 5–10 February 2024

First report of Committee A

(Draft)

At its third plenary meeting on 6 February 2024, the Conference of the Parties elected the following delegates to Committee A: Dr Nuntavarn Vichit-Vadakan (Thailand) as Chairperson, and Mr Csaba Kontor (Hungary) and Dr Gabriel Alexander Ordóñez (Ecuador) as Vice-Chairpersons.

Committee A held its second, third and fourth meetings on 7 February 2024, under the chairmanship of Dr Nuntavarn Vichit-Vadakan (Thailand).

Committee A recommends to the Conference of the Parties the adoption of the attached decisions related to the following agenda item:

6. Treaty instruments and technical matters

6.4 Forward-looking tobacco control measures (in relation to Article 2.1 of the WHO FCTC)

One decision entitled:

- Forward-looking tobacco control measures (in relation to Article 2.1 of the WHO FCTC)

6.5 Implementation of Article 19 of the WHO FCTC: Liability

One decision as amended entitled:

- Implementation of Article 19 of the WHO FCTC: Liability

Agenda item 6.4

Forward-looking tobacco control measures (in relation to Article 2.1 of the WHO FCTC)

The Conference of the Parties,

Recalling that Article 2.1 of the WHO Framework Convention on Tobacco Control (WHO FCTC) encourages Parties to implement measures beyond those required by this Convention and its protocols, noting that nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and in accordance with international law;

Noting that Article 3 of the Convention articulates the objective of the treaty in the context of a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke;

Recalling that Article 5 of the Convention calls on Parties to adopt and implement measures and cooperate, as appropriate, with other Parties in developing appropriate policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke;

Recalling also the commitment of Parties to the WHO FCTC in the Seoul Declaration, adopted in decision FCTC/COP5(5), to accelerate implementation of the Convention in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke, as well as the Moscow Declaration and the Delhi Declaration, adopted in decisions FCTC/COP6(26) and FCTC/COP7(29);

Mindful that Parties have achieved different levels of implementation of tobacco control measures, including forward-looking tobacco control measures;

Recalling that Article 4 of the Convention highlights the need for comprehensive multisectoral tobacco control measures, and that Article 5 provides that each Party shall develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with this Convention;

Noting with concern that the strategies and tactics used by the tobacco industry evolve constantly as the industry attempts to interfere with the setting and implementing of tobacco control measures;

Recognizing that forward-looking tobacco control measures and measures that expand approaches to tobacco control had been developed since the Convention was adopted and that Parties may find it challenging to identify those that relate to tobacco products;

Welcoming the fact that a number of Parties have implemented tobacco product-related measures that may be considered to relate to implementation of Article 2.1,

1. **DECIDES:**

- (a) to establish an expert group on tobacco control measures that are forward-looking and could be contemplated within the scope of Article 2.1 of the WHO FCTC;

- (b) to mandate the expert group:
 - to identify and describe forward-looking tobacco control measures and measures that expand or intensify approaches to tobacco control as they apply to tobacco products, and that may be contemplated by the expert group within the scope of Article 2.1, taking into account the Guidelines for implementation of the WHO FCTC;
 - to consider, in conducting its research and elaborating its findings, Party experience and published literature, as well as any other source of information that it may find appropriate, and properly reference all sources; and
 - to prepare a report to be submitted to the Eleventh session of the COP on the above matters;

2. REQUESTS the Convention Secretariat:

- (a) under the guidance of the Bureau, to set out the terms of reference of the expert group in accordance with the above mandate and to facilitate the establishment of the expert group, to be composed of:
 - up to 12 members, with appropriate technical experience relevant to the mandate of the expert group and ensuring regional balance to as great an extent as possible; and
 - up to two observers with relevant expertise that represent civil society organizations that are accredited observers to the COP;
- (b) to invite the Knowledge Hubs to provide relevant information to the expert group;
- (c) to invite the World Health Organization to provide technical support to the expert group;
- (d) to make the necessary arrangements, including budgetary arrangements, for the expert group to complete its work using electronic means of communication to as great an extent as possible.

Agenda item 6.5

Implementation of Article 19 of the WHO FCTC: Liability

The Conference of the Parties,

Acknowledging that issues relating to liability, as determined by each Party within its jurisdiction, are an important part of comprehensive tobacco control;

Recalling decisions FCTC/COP5(9), FCTC/COP6(7), FCTC/COP7(11) in relation to implementation of Article 19 of the WHO FCTC on liability, as well as decision FCTC/COP8(18) encouraging Parties to promote national and international cooperation to enhance implementation of Article 5.3 of the WHO FCTC in relation to Article 19 of the WHO FCTC;

Further recalling that decision FCTC/COP8(18) emphasized that “tobacco industry interference remains one of the greatest obstacles to the implementation of the Convention and undermines tobacco control efforts at the global, regional and country levels, particularly exacerbating the challenges faced by developing countries and countries with economies in transition”;

Recognizing the principle embodied in the Guidelines for implementation of Article 5.3 of the WHO FCTC that Parties “should require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent”;

Recalling decision FCTC/COP9(10), in which the Conference of the Parties noticed “with increasing concern the recent acquisitions by tobacco transnational corporations of pharmaceutical companies that could complicate and hinder tobacco control implementation”;

Reiterating that human rights treaties such as the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child are recalled by the WHO FCTC, and acknowledging that the deaths and harms caused by tobacco undermine human rights;

Recalling that the Conference of the Parties may consider issues related to liability, taking into account the work being done in relevant international fora;

Recognizing the work of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, and the development, under its mandate, of a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, in particular regarding issues related to liability;

Recognizing the devastating environmental consequences of tobacco consumption and exposure to tobacco smoke and the potential use of liability in protecting the environment from tobacco harms;

Recalling the reports of the Convention Secretariat on “Implementation of Article 19 of the Convention: ‘Liability’”, as contained in documents FCTC/COP/4/13 and FCTC/COP/5/11, including possible approaches through which the Conference of the Parties could support Parties in taking legislative action or promoting their existing laws to deal with civil liability pursuant to Article 19 of the WHO FCTC;

Further recalling the reports of the expert group on “Implementation of Article 19 of the Convention: ‘Liability’”, as contained in documents FCTC/COP/6/8 and FCTC/COP/7/13, including available options for developing legislation for Parties to consider, in particular in the context of civil liability, as well as options for technical support, international cooperation and the exchange of information for the effective implementation of Article 19 of the WHO FCTC,

1. REMINDS Parties of their obligations under Article 19 of the WHO FCTC;
2. URGES Parties:
 - (a) to apply to the tobacco industry the highest standards and best practices of holding businesses liable for their conduct;
 - (b) to require that the tobacco industry and those working to further its interests operate and act in a manner that is accountable and transparent;
 - (c) to consider legislative development or reform to strengthen liability regimes, including to facilitate compensation where appropriate, as part of a comprehensive tobacco control policy;
 - (d) to establish and apply, in accordance with their national law, criminal, civil or administrative procedures and effective, proportionate and dissuasive sanctions in order to enforce the liability of the tobacco industry;
 - (e) to exchange information on means of enforcement of liability of the tobacco industry, including sanctions and penalties, or compensation where appropriate;
 - (f) to ensure policy coherence in relation to tobacco industry liability at the national and global levels, including in international and regional organizations in which Parties are represented, as well as among non-State actors, particularly those working on Sustainable Development Goals and noncommunicable diseases, and on the environmental agenda;
 - (g) to call upon international and regional organizations in which Parties are represented to ensure that the work undertaken in these international fora, including in relation to the environment and regulation of business conduct, supports tobacco control and does not undermine it; and
 - (h) to closely monitor transactions, such as acquisitions of or investments by transnational tobacco corporations in pharmaceutical and other health-related companies that could interfere with and undermine public health policy;
3. DECIDES:
 - (a) to re-establish an expert group on liability, taking into account the work completed by the expert group on liability established pursuant to decision FCTC/COP5(9) and whose mandate was extended in decision FCTC/COP6(7);
 - (b) to mandate the expert group:
 - to review and collect information in respect of the practice that has evolved at Party level, taking into account the work being done in relevant international fora, and support

Parties, as relevant, to strengthen their criminal and civil liability regimes, including administrative measures, to ensure accountability and deterrence, improve access to justice, and allow for effective remedies for those affected by tobacco harms, on a voluntary basis and upon request by the Parties;

- to provide options for Parties to detect and counter tobacco industry efforts to evade applicable liability regimes or to undermine tobacco control, including through corporate reorganization or investments;
- to explore the possible development of a methodology that estimates or quantifies the health care costs borne due to tobacco use, in order to support Parties in collecting evidence to be used in tobacco-related litigation;
- to report on its work at the Eleventh session of the Conference of the Parties;

4. REQUESTS the Convention Secretariat:

(a) under the guidance of the Bureau, to set out the terms of reference of the expert group in accordance with the above mandate and to facilitate the establishment of the expert group, to be composed of:

- up to 12 members, with appropriate technical experience relevant to the mandate of the expert group and ensuring regional balance to as great an extent as possible; and
- up to two observers with relevant expertise that represent civil society organizations that are accredited observers to the COP;

(b) to make the necessary arrangements, including budgetary arrangements, for the expert group to complete its work using electronic means of communication to as great an extent as possible.

5. FURTHER REQUESTS the Convention Secretariat:

(a) to continue to raise awareness about Article 19 of the WHO FCTC and the tools available for Parties to strengthen its implementation;

(b) to participate in global fora to promote policy coherence between tobacco industry liability and the development of international law in relation to the environment, human rights and regulation of business conduct;

(c) to include an item on liability in the provisional agenda for each regular session of the Conference of Parties, to be considered by the Conference of the Parties in accordance with its Rules of Procedure.

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